

KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS
SPECIAL MEETING MINUTES
November 19, 2021

A special called meeting of the Kentucky Board Chiropractic Examiners was held at the Department of Professional Licensing located at 500 Mero Street, Frankfort, KY 40601 and via Zoom on November 19, 2021.

MEMBERS PRESENT

Dr. Kelly Cooper-Henson
Dr. James England
Dr. Chad Henderson
Dr. Shannon Johnson
Dr. Jeffery Smith

DEPARTMENT OF PROFESSIONAL LICENSING

Kevin Winstead, Commissioner
Chessica Nation, Administrative Section Supervisor
Tasha Stewart, Board Administrator

OTHERS

August Pozgay, Public Protection Cabinet
Office of Legal Services, Board Counsel

GUESTS

Dr. Rachel Wendt, KAC
Dr. Chip Salyers
Valerie Hill
Don Oliva
Brittany Hicks
Dr. Christopher Gast

CALL TO ORDER

Dr. Smith called the meeting to order at 12:01 p.m.

Mr. Oliva provided a continuing education presentation on behalf of CE Broker. The applications committee stated it will follow up with the board administrator for more research.

MINUTES

A motion was made by Dr. England to approve the minutes from the September 10, 2021 board meeting. Motion seconded by Dr. Johnson, carried.

FINANCIAL STATEMENT

The board reviewed the September and October 2021 financial statements. No action taken.

DPL UPDATE

Commissioner Winstead advised the state of emergency has been extended to January 15, 2022 and DPL has moved expiration and renewal dates accordingly. DPL will continue to monitor the SOE, especially during the next Legislative session which is slated to start January 4, 2022.

LEGAL COUNSEL

Mr. Pozgay advised the board's approved regulation amendments have been filed with the Legislative Research Commission. Mr. Pozgay appeared before the regulations committee and received no questions. The next regulations meeting is November 23, 2021 at 1:00 p.m. Dr. Johnson made a motion for Commissioner Winstead to speak on behalf of the board at that meeting and to appoint Dr. England to attend. Motion seconded by Dr. Henderson, carried.

Mr. Pozgay advised the board's actions dated April 24, 2020 and May 15, 2020 were ratified by the Legislature and made law until the end of the state of emergency established through House Joint Resolution 1. Mr. Pozgay advised the board cannot adopt items that retract from what is already in HJR 1, but he will present more research at the next board meeting on this topic.

Dr. England made a motion for Dr. Smith, with Commissioner Winstead and Mr. Pozgay's assistance, to draft a letter to Legislative Leadership with guidelines stating the measures taken in June 2020 to address COVID-19 and to propose guidelines moving forward if the state of emergency is not lifted on January 15, 2022. Motion seconded Dr. Johnson, carried. Dr. England made motion to rescind the above board action. Motion seconded by Dr. Henderson, carried.

Dr. England made a motion for Dr. Smith, Mr. Pozgay, and Commissioner Winstead to draft a courtesy letter to Legislative Leadership stating the board would like to be included in guidance conversations before the next legislative session in the event the state of emergency is extended, and to offer guidance prior to the legislative session's end. Motion seconded by Dr. Johnson, carried.

Mr. Pozgay advised that committee meetings will follow the open meetings act. No board action taken.

Dr. Johnson made a motion for Mr. Pozgay to develop a list of historical votes by the board. Motion seconded by Dr. England, carried.

OLD BUSINESS

Dr. Smith reported his discussion with Dr. Steven Stack regarding immunization and mask waivers. The immunization waiver discussion was deemed irrelevant because doctors are no longer needed to complete the form. Dr. Smith made a motion for the board administrator to respond to mask waiver questions as follows: Chiropractors can write mask waivers but must remain in their scope of practice and have proper documentation for the waiver. Motion seconded by Dr. Johnson, carried.

The board reviewed a response to a manipulation under anesthesia question. Dr. England made a motion for legal counsel to draft and send a letter with Dr. Smith's approval stating the chiropractor must be within their scope of practice and must have proper training. The letter will not serve as general guidance and any questions should be taken to the individual's own general counsel. Motion seconded by Dr. Johnson, carried.

NEW BUSINESS

The board reviewed a scope of practice question. Dr. England made a motion for legal counsel to clarify what fracture management is referencing and if the doctor is casting or setting bones, then draft and send a letter with Dr. Smith's approval stating the chiropractor must be within their scope of practice and have proper training. The letter will not serve as general guidance and any questions should be taken to the individual's own general counsel. If Dr. Smith has concerns about the doctor's response, this item will be tabled to the next meeting. Motion seconded by Dr. Johnson, carried.

Dr. Johnson made a motion to postpone the online continuing education credit extension consideration until the January meeting. Dr. Johnson rescinded his motion. Dr. Johnson made a motion to extend the continuing education May 19, 2021 memorandum for the 2022 renewal year. Dr. Johnson rescinded his motion. Dr. Henderson made motion to postpone consideration until the next meeting. Motion seconded by Dr. England, carried.

The board asked the board administrator to inquire if the Kentucky Chiropractic Society is planning to submit for board approval any peer review continuing education classes in 2022 and if they have obtained PACE approval.

Dr. Smith proposed a 3 hour limit to continuing education audits due to possible financial strains. Dr. England made a motion to temporarily suspend the CE audit while researching this topic further. Dr. England retracted his motion. Dr. England made a motion for the board administrator to reach out to the Federation of Chiropractic Licensing Board to inquire about their PACE auditing system, how other states perform live and online CE audits, and for legal counsel to research the board's existing regulations for information on monitoring CE courses. Motion seconded by Dr. Henderson, carried.

Dr. Johnson made a motion to adopt the following 2022 meeting schedule, with all meetings beginning at noon EST: January 21, 2022, March 11, 2022, May 6, 2022, July 15, 2022, September 16, 2022, and November 18, 2022. Motion seconded by Dr. Smith, carried.

Dr. England made a motion for Dr. Smith to serve as board president. Motion seconded by Dr. Johnson, carried. Dr. Smith recused from the vote.

Dr. Johnson made a motion for Dr. England to serve as board vice president. Motion seconded by Dr. Henderson, carried. Dr. England recused from the vote.

Dr. Henderson made a motion for Dr. Johnson to serve as board secretary. Motion seconded by Dr. England, carried. Dr. Johnson recused from the vote.

The board reviewed a migraine device scope of practice question. The board asked the board administrator to research the following questions: Is this taught in any chiropractic college or sponsored by a chiropractic college or post-graduate college/course? What is the training educational standard for doctors to use this device? Request any related course or college brochures for board review. Dr. Henderson made a motion to postpone consideration until the next meeting. Motion seconded by Dr. Johnson, carried.

The board reviewed an EPSDT examination question. The board asked legal counsel to inquire how the doctor intends to utilize and submit this examination form. Dr. England made a motion to postpone consideration until the next meeting while counsel obtains further information. Motion seconded by Dr. Johnson, carried.

Dr. Smith made motion to nominate Dr. Henderson to serve on the PACE Review Team. Motion seconded by Dr. England, carried.

APPLICATIONS COMMITTEE

The applications committee reported another influx in applications, with one recent packet containing 63 applications total. Preceptorship applications are being submitted again.

The board administrator reported 1142 inactive and active licensees. As of the report run time, 34 chiropractic and 12 peer review licensees have not completed their 2020 renewal. 956 licensees have completed their 2021 renewal.

STATUTES AND REGULATIONS COMMITTEE

Dr. England provided the board with an update on the KBVE-KBCE animal chiropractic discussion. Dr. Henderson made a motion to authorize Mr. Pozgay and the committee to request KBVE withdraw the

proposed animal chiropractic section in their bill when filing for their statutory changes, continue the animal chiropractic conversation, and then file a bill and any regulation changes for both boards at once when ready. Motion seconded by Dr. Cooper-Henson, carried.

The board inquired if it can use regulations to define a chiropractic facility more closely. Mr. Pozgay advised a statutory change would be needed, but he cannot draft bills for the board under the current OLS contract. The board can consider broadening the OLS contract if bill writing services are needed. The board postponed this discussion to let the committee conduct further research with Mr. Pozgay.

Mr. Pozgay advised there is not a \$50 cap for paying for peer review services and no regulatory changes are needed.

The SPEC exam discussion was postponed until the next meeting.

COMPLAINTS COMMITTEE

The Complaints Committee presented the following recommendations for board vote:

- 19-003: ongoing
- 2019KBCE00005: ongoing. If no resolution, proceed to KRS Chapter 13B hearing.
- 2020KBCE00001: Ongoing.
- 2020KBCE00007: Ongoing. If no resolution, proceed to KRS Chapter 13B hearing.
- 2020KBCE00011: Ongoing
- 2020KBCE00014: Ongoing
- 2021KBCE00001: Ongoing
- 2021KBCE00004: Ongoing
- 2021KBCE00008: Ongoing
- 2021KBCE00009: Ongoing. Waiting on KRS Chapter 13B hearing date.
- 2021KBCE00010: Ongoing. Waiting on KRS Chapter 13B hearing date.
- 2021KBCE00012: Ongoing investigation.
- 2021KBCE00013: Ongoing investigation.
- 2021KBCE00014: Ongoing. Waiting on KRS Chapter 13B hearing date.
- 2021KBCE00015: Recommend dismissal.
- 2021KBCE00016: Ongoing investigation.
- 2021KBCE00017: Ongoing
- 2021KBCE00019: Ongoing
- 2021KBCE00020: Recommend agreed order with the following terms: suspension probated one year under the condition of no new offenses.
- 2021KBCE00021: Assign to investigators with board counsel to prepare referral memorandum.
- 2021KBCE00022: Recommend dismissal.
- 2021KBCE00024: Recommend dismissal and inform complainant they may request a peer review.
- 2021KBCE00025: Ongoing.
- 2021KBCE00026: Recommend dismissal.
- 2021KBCE00027: Recommend dismissal with reference to current practice obligations related to Covid-19.

- 2021KBCE00028: Ongoing.
- 2021KBCE00029: Ongoing.
- 2021KBCE00030: Granted twenty (20) day extension for respondent to submit response to the complaint.
- 2021KBCE00031: Recommend dismissal and inform complainant they may request a peer review.
- 2021KBCE00032: Recommend dismissal and inform complainant they may request a peer review.
- 2021KBCE00033: Ongoing.
- 2021KBCE00034: Recommend assigning to investigators with board counsel to prepare referral memorandum.
- 2021KBCE00035: Recommend dismissal and inform complainant they may request a peer review.
- ABC Complaint: Ongoing.
- Crude Email: Postpone consideration until next complaints committee docket.
- A.M. Guilty Plea: Propose agreed order to include the terms from A.M.'s attorney regarding voluntary surrender.
- Mass. Complaints: Ongoing.

A motion was made by Dr. England to accept the above-listed complaint committee recommendations as presented for affirmative vote. Motion seconded by Dr. Smith, carried.

TRAVEL AND PER DIEM

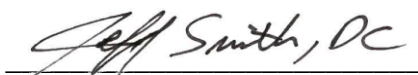
A motion was made by Dr. Henderson to approve the following per diem:

- Drs. Cooper-Henson, England, Henderson, Johnson, and Smith – November 19, 2021 meeting
- Dr. Cooper-Henson – September 20, 2021 (3 hours – applications review), October 20, 2021 (3 hours – applications review), October 28, 2021 (3 hours – applications review), November 16, 2021 (3 hours – applications review), and November 18, 2021 (3 hours – applications review and meeting preparation).
- Dr. England – October 21, 2021 (3 hours – meeting preparation and KBVE meeting), November 16, 2021 (3 hours – complaints review and meeting preparation), and November 18, 2021 (3 hours – complaints review and meeting).
- Dr. Johnson – November 18, 2021 (9 hours – complaints review and meeting and meeting preparation).
- Dr. Smith – October 28, 2021 (3.5 hours – correspondence).

Motion seconded by Dr. Johnson, carried.

ADJOURN

A motion was made by Dr. Johnson to adjourn the meeting at 2:56 p.m. Motion seconded by Dr. Henderson, carried.


 Dr. Jeffery Smith, Chair